

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMIR HAKIM MCCAIN,  
Administrator of the Estate of  
Deceased An-Nisa McCain,  
Individually in His Own Rights

v.

COURT OF COMMON PLEAS, ET AL.

CIVIL ACTION

NO. 09-4153

**FILED**  
SEP 23 2009  
MICHAEL E. KUNZ, Clerk  
By \_\_\_\_\_ Dep. Clerk

M E M O R A N D U M

ROBRENO, J.

SEPTEMBER 23, 2009

Plaintiff, a prisoner, is seeking to bring a civil action without prepayment of fees, alleging that the defendants violated his civil rights at his criminal trial by allowing a "sham defense," which resulted in his conviction, and also caused the civil rights of his deceased daughter, An-Nisa McCain, to be violated. Plaintiff seeks injunctive relief and damages.

Pursuant to 28 U.S.C. § 1915(g), a prisoner who on three or more prior occasions while incarcerated has filed an action in a federal court that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, must be denied in forma pauperis status unless he was in imminent danger of serious physical injury at the time that the complaint was filed. Abdul-Akbar v. McKelvie, 239 F.3d 307 (3d Cir.), cert. denied, 533 U.S. 953 (2001).

Plaintiff has, prior to the instant action, filed four civil actions in this Court and an appeal to the Third Circuit

Court of Appeals which were dismissed as frivolous.<sup>1</sup>

Furthermore, nothing in this complaint suggests that plaintiff was in imminent danger of serious physical injury at the time the complaint was filed.

Accordingly, plaintiff's motion to proceed in forma pauperis will be denied.

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1. Civil Action No. 04-5513 was dismissed as frivolous on April 17, 2006. Civil Action No. 08-1613 was dismissed as frivolous on July 30, 2008, and plaintiff's appeal was dismissed as frivolous by the Third Circuit Court of Appeals on July 6, 2009. Civil Action Nos. 09-0785 and 09-2385 were dismissed as frivolous on April 27, 2009 and July 2, 2009 respectively, and are presently on appeal to the Third Circuit Court of Appeals.